

**City of Newburyport
Zoning Board of Appeals
January 22, 2013
Minutes**

The meeting was called to order at 7:10 P.M.
A quorum was present.

1. Roll Call

In Attendance: Ed Ramsdell (Chair), Duncan LaBay (Secretary), Robert Ciampitti (Vice-Chair), Jamie Pennington, Howard Snyder, Jared Eigerman (Associate Member), Richard Goulet (Associate Member)

2. Business Meeting

Minutes of January 8, 2013 Meeting

Mr. Snyder made a motion to approve the minutes as submitted and Mr. Goulet seconded the motion.

The motion passed unanimously.

Ed Ramsdell – approve

Robert Ciampitti – abstain (absent from 1/8/2013 meeting)

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder – approve

Jared Eigerman –approve

Richard Goulet – approve

2012 041

Address: 4 New Pasture Road

Use Variance

Expand accessory industrial retail use to permit Use #407, Entertainment/Clubs

This hearing was continued from November 27, 2012. The applicant requested another continuance until the February 12, 2013 meeting. The Licensing Commission will review this application at their February 6, 2013 meeting. The applicant has requested this continuance from the Zoning Board as they should have a clear understanding of what the Licensing Commission will allow in regard to a pouring permit and entertainment license after the February 6 meeting. Mr. LaBay asked if there was any sense that the February 12 meeting would be too premature. Chai Ramsdell said that the applicant specifically requested February 12.

Motion to continue the hearing for the Use Variance to February 12, 2012 made by Mr. LaBay, seconded by Mr. Pennington.

The motion passed unanimously.

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder – approve

2013 004

Address: 40 Merrimac Street

Special Permit for Non-Conformities

Allow an upward extension of preexisting non-conforming setbacks

The applicant is 40 Merrimac Street LLC. Joseph A Leone, Trustee of the 40 Merrimac LLC was present at the meeting. The architect for the project, Douglas F. Trees, DF Trees Associates, PC, 557 Bay Road, Hamilton, MA 01936, spoke on behalf of the applicant at the meeting. Architect Trees indicated they wanted to change the use of 40 Merrimac Street to a restaurant use (Merrimac Ale House). He presented plans associated with the restaurant. The property currently contains one contiguous group of structures, the original brick portion built in approximately 1850, with a concrete block addition in the 1950s and others in the 1980s with a total footprint of 6,417 sf. They are seeking relief to allow an upward extension of the building to accommodate a 591-seat restaurant, with a mix of both interior and exterior seating. The proposal includes the restoration of the historic building, reconstruction of the existing concrete block structure attached to the historic building, the construction of a second story above the concrete block portion, as well as first story roof deck. As proposed, the applicant will install a 7' pedestrian walkway that will run from Merrimac Street, alongside the building, on property owned by the Waterfront Trust (WFT) to the riverside to satisfy Chapter 91 requirements. They went before the Newburyport Historical Commission to discuss their intent to preserve the original building. Mr. Leone has proposed contributing up to \$40,000 toward capital improvements to the Waterfront Trust property. Architect Trees showed renderings of the proposed new structure looking down Green Street towards the Waterfront Trust

Chairman Ramsdell opened the hearing to public comment.

In favor:

Douglas Locy, 17 Alberta Ave, Newburyport, MA Mr. Locy co-chairs the Waterfront Trust. He has no objections to the application for a Special Permit for non-conformities. Originally the intent was to satisfy Chapter 91 by installing a 7 foot walkway. This is looked upon favorably by the trustees. It has always been the wish/intent of the trustees to turn Riverside Park into a park and not a parking lot. There are potential concerns with the size and mass of the building (120 – 150 parking spots) and the traffic flow throughout the park. Mr. Leone has been upfront with the trustees.

Robert Fenner, 1 Ferry Lane, Georgetown, MA Mr. Fenner is more in favor than opposed, but in the middle. This is the first time he has seen the plans and he would like the opportunity to have some time to digest them.

In Opposition:

Lisa Mead, Attorney, Blatman, Bobrowski, & Mead, LLC, 30 Green Street, Newburyport, MA, on behalf of David Murphy, Manager, Brown's Wharf, LLC, owner of property located at 40R Merrimac Street.

Attorney Mead indicated that the proposed alterations to the non-conforming structure require a variance for lot coverage and possibly rear lot setback. She provided rationale for this argument at the meeting which was also detailed in her January 15, 2013 letter to the Zoning board of Appeals. Attorney Mead then spoke to Special Permit findings. She reiterated the information provided in her January 15 letter to the Zoning board of Appeals and said that the Zoning Board has a right to determine when the proposed use will be more detrimental. She reviewed in detail rationale about why the proposed use would be substantially more detrimental to the neighborhood. She concluded by asking the board to deny the Applicant's request for a Special Permit or, in the alternative, require the applicant to provide the necessary information for this Board to make an informed determination as to whether the proposed use of the property conforms to the NZO. If the applicant is required by the Board to provide this additional information, Attorney Mead said the Board should require a redesign of the Refrigeration Equipment and dumpster location so as to eliminate any nuisance caused by the current design and placement and also require the applicant to address how the parking will be satisfied.

Bill Harris, 56 Lime Street, Newburyport, MA 01950 Mr. Harris provided a document entitled "Preliminary comments of the Newburyport Chapter 91 Citizen's Committee in opposition to the grant of a special permit to vertically expand a to-be-built ale house at 38-40 Merrimac Street". He spoke providing an oral summary of the comments provided in this document at the meeting. In conclusion, he indicated that he hopes the applicant will seek a continuance. He agrees with Attorney Mead that a Variance should be sought. He said that the groups impacted were:

- Waterfront Trust
- NRA
- City Planning Office
- Firehouse
- Boat Operations
- Chapter 91 Committee.

He said that the only reasonable decision tonight would be to deny the special permit.

Peter Fitzsimmons, 7 Arlington Street, Newburyport, MA 01950 Mr. Fitzsimmons said he is a user of the riverside Park and Market Landing. He is concerned about parking. He was supportive of Mr. Harris' comments.

Resident, 1 Merrimac Street, Newburyport, MA 01950 This resident indicated he has been a boat operator for many years. He is not opposed or in favor. 500 – 600 more folks will be a dramatic change. There are pluses and minuses associated with this project

Questions from the Board:

Mr. Pennington asked the applicant to explain how users of the building will come and go. The applicant indicated that the users for his restaurant are already in Newburyport. The parking, in

reality, won't be so much because they included indoor and outdoor seating in their projections. The outdoor seating will not be used for 9.5 – 10 mos. per year. The traffic will be allowed to circle. The new restaurant and the other businesses would share parking. Mr. Leone referred to the Black Cow and discussed how there are 100 seats on the deck. These are only used for 2 – 2.5 months of the year.

Mr. Eigerman asked about the MEPA document. Architect Trees said it was approved. Chapter 91 is in the processing phase. Mr. Eigerman asked, as part of the MEPA review, was there parking data? Mr. Eigerman indicated that it would be helpful for the Board to have a copy. Mr. Eigerman asked the applicant about Attorney Mead's assertions that there had been no contact between her client and the applicant. Mr. Leone said that he had received an initial call to work out a deal about parking. When he did not respond favorably to the request, Attorney Mead's client didn't like the plan.

Mr. Eigerman asked if there had been any input from City staff on the property right issue that Mr. Harris had brought up at the meeting?

Chair Ramsdell said he doesn't think they can make a decision because new information has been presented and they need clarification

Mr. Pennington asked the Architect if he had any concerns about the right to the land. The Architect said he had been shocked to hear about this issue, it is certainly a surprise.

Mr. Goulet asked about the noise. He wanted to hear more about the mechanical systems. Mr. Leone said there would be a typical rooftop fan, HVAC, typical refrigeration unit. They are efficient and quiet.

Mr. Snyder asked about deliveries and delivery times. Mr. Leone indicated that the delivery schedule would be the same as the Black Cow – early morning.

Mr. Snyder asked if the waste removal would be similar to the Black Cow as well. The applicant answered that it would be. They keep the food waste refrigerated during the summer.

Mr. Pennington indicated that the assumption is that it is the same situation as the Black Cow and they are respecting the 25' setback.

Mr. Eigerman asked about the loading dock – is it concrete? The architect indicated that they have not gotten to that level of detail yet.

Chair Ramsdell asked Mr. Harris to briefly review the property rights issue.

Mr. Harris indicated that the site of this project is the site of legally significant grant and restrictions known as "Somerby Landing". Only that portion of Somerby Landing included in the NRA takings of 1968 was litigated in the Massachusetts land court in Case 39539 (1977 – 1988). This does not mean that Somerby Landing is only coextensive with Riverside Park at the intersection with Merrimac Street – 44 feet in length. To the contrary, Somerby landing extended 110.5 feet along Merrimac Street, from the easterly point of Riverside Park and Merrimac Street westerly along Merrimac Street. This means Somerby Landing extends about 44 feet along Waterfront Trust street frontage, then 20 feet for 38 Merrimac Street, then 33+ feet for 40 Merrimac Street. Somerby Landing extends about 16.5 feet, more or less, across the Merrimac Street frontage of Brown's Wharf Way, just westerly of the Richard W. Drown building, also known as the Davis Auto Electric building. The deed indicates that the building owned by Charles Hodge, was bound on Merrimac Street, westerly and northeasterly by Somerby landing. An appeals court decision in 1980 expressly stated that Somerby landing was not to be sold by the City of Newburyport. It is the position of the Newburyport Chapter 91 Citizen's Committee that the Zoning Board of Appeals lacks the legal authority, as contrary to the restrictions and obligations of the city pursuant to the Somerby Landing grant of 1752, to dispossess the City of

its property rights in 38 Merrimac Street, whether by direct sale or by enlarging an illegal encumbrance upon Somerby landing whose duties continue in force. The Board should not allow a vertically enlarged building at 39 Merrimac Street, and should require that this portion of the site be utilized for outdoor dining and project mitigation.

Chairman Ramsdell also asked Attorney Mead to review why she thinks this needs to be a variance, as opposed to a Special Permit for Non-conformities. Attorney Mead indicated that the refrigeration equipment and the loading platform are considered alterations to the structure and therefore must be considered in the lot area calculation. The lot coverage is altered. The required lot coverage is 30%. The property now has a non-conforming lot coverage of 46.46%. The construction of the loading platform and the addition of the Refrigeration equipment will increase the lot coverage, effectively extending the nonconformity. Because the proposed changes will extend a current non-conformity, the Applicant must apply for and receive a variance.

Deliberations:

Mr. Snyder said that he had been presented with new information at this meeting and would like to be able to read through it and understand it.

Mr. Eigerman urged his colleagues to entertain a continuance. He said the issue of the trust and Sommerby Landing is not trivial; there are different theories about whether the loading dock and refrigeration are counted as accessory areas; he thought there should be better and more documentation from the applicant; we should have elevations of all facades; we should see a better representation of the project; this is quite a large use, it is soaking up a lot of parking the applicant has to take this into account.

Mr. LaBay said that the applicant has a copy of Attorney Mead's letter; the applicant should prepare a presentation addressing the points made by Attorney Mead.

Mr. Pennington said that the plan presented is still evolving. He wanted a sense of the timeline. He is finding himself generally in favor, but the "devil is in the details".

Motion to continue the hearing for the Special Permit to February 26, 2012 made by Mr. Pennington, seconded by Mr. Snyder.

The motion passed unanimously.

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder – approve

2013 005

Address: 1 Carleton Drive

Special Permit for Non-Conformities

Construct an addition over 500 sf on a property with pre-existing, non-conforming front and rear yard setbacks

The current owner of the property is Dorothy Parker. Henry C, Becker, PO Box 1319, Newburyport, MA represented the new owner (Donna Devlin) at the meeting. Mr. Becker indicated that they plan to build a 578 sf addition which abuts Jackson Street. The existing garage will be removed. He showed elevations of the project and the existing plan. He also showed a revised plan where the roof is now even with the existing roof. The home is currently 1075 sf and they are adding 578 sf . The proposed construction will not create any new non-conformities, however, it will intensify any existing front yard non-conformity as allowed by the court case of Gale vs Gloucester. The proposed addition to the single family home will not violate any further requirements of the zoning code for the structure. The rear yard and front yard setback to Carleton Drive remain the same as does the right hand side yard setback. Remaining dimensional requirements will all still conform. The front yard setback to Jackson will be intensified from 17.0' to 15.2' though it will still be substantially better than the average of the two nearest structures on Jackson St of approximately 6.7'. The proposed project improves the street appeal of the existing building thereby creating a more pleasing streetscape that will bring the appearance of the entire neighborhood to a higher level. At the same time the addition allows the more functional use of the home that has become outdated since it was constructed.

Chairman Ramsdell opened the hearing to public comment.

In favor:

Daniel Simon, 11 Jackson St., Newburyport, MA Mr. Simon indicated he is in favor. The project is an improvement, it has nice street appeal.

Donna Devlin (new owner of 1 Carlton), Newburyport, MA Ms. Devlin indicated she is in favor.

In Opposition:

None

Questions from the Board regarding Public Hearing #3:

Mr. Ciampitti asked about the non-conforming set-backs is the rear yard non-conforming? Everett Chandler, Land Surveyor Design Consultants, Inc, 68 Pleasant St., Newburyport, MA indicated that the front yard setback is non-conforming.

Mr. Eigerman asked if there would be changes associated with parking. Mr. Chandler said there would not. Mr. Snyder asked if the farmer's porch extends the complete width of the house. Mr. Chandler indicated that it is slightly over; it will be intensification. Mr. Eigerman noted the little cupola and asked if the neighbors had seen it. Mr. Chandler indicated they had.

Deliberations:

Mr. LaBay said the applicant has made the case. It is an undersized lot, can't change. The total increase in sf is only 300 sf; the dimensions change. The abutters are in favor; he is willing to support.

Mr. Ciampitti agrees; the project is well thought-out; they have maximized the use of the property within the lot.

Mr. Pennington likes the project.

Mr. Snyder said he was in favor.

Mr. Goulet agreed with the exception of the cupola.

Mr. Eigerman said the project was appropriate; meets standards; is in scale.

Motion to approve the Special Permit for Non-conformities made by Mr. Pennington, seconded by Mr. Ciampitti.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Robert Ciampitti – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder – approve

2013 006

Address: 55.5 Bromfield Street

Special Permit for Non-Conformities

Demolish pre-existing non-conforming deeded half house and replace it with a single family residence

2013 007

Address: 57 Bromfield Street

Special Permit for Non-Conformities

Demolish pre-existing non-conforming deeded half house and replace it with a single family residence

Mark Griffin, Esq., 11 Market Square, Newburyport, MA, represented Bromfield Hancock Development, LLC at the meeting. Attorney Griffin provided background at the meeting, reiterating what had been provided in a Memorandum to the board. The two existing structures are older homes on an undersized lot in a neighborhood with many older homes also situated on non-conforming undersized lots. Many of these homes also have nonconforming setbacks. These two properties are deeded half-houses existing on separate lots. In June, the petitioner, received approvals from the ZBA to reconstruct the two half houses within one structure. This plan – had it been implemented – would have resulted in the combination of the two independent lots into one lot and the conversion of the structure into two condominium units. Upon reconsideration, the petitioner made the decision to move forward with the current plan due to the better utility and marketability of detached single family structures as opposed to dwelling units which share a common wall. The applicant has the ability to obtain a demolition permit from the Historical Commission. The applicant is proposing demolishing the 2 half-houses and constructing 2 detached single family homes. 55.5 Bromfield will add 546 sf over what existed; 57 Bromfield will add 646 sf over what existed. Attorney Griffin indicated that the intensification of non-conformities is negligible. There was 1 error made in the application materials. On 57 Bromfield they said all nonconformities would be made better – this is not true. Lot coverage will increase by 6.8%. For 55.5 Bromfield, no nonconformities are increasing; they are all decreasing.

Attorney Griffin submitted letters from abutters at 3 Hancock, 63 Bromfield, 30 Bromfield, 74-76 Bromfield who are all in favor of the projects. Attorney Griffin said not to compare the hearing in June to the current hearing. Compare what exists now to what is being proposed. The existing structure is falling down, in terrible shape, and has been released from demolition delay. They will be creating 2 parking spaces on each lot which they do not have today. The massing of the buildings fits into the neighborhood. The homes will be similar in size and structure to other homes in the neighborhood. The value of the property will significantly increase. These projects are not significantly more detrimental. In meeting with some of the abutters, they came to agreement to move one of the homes (55.5 Bromfield). They will move the home 10 more feet and make a 20 foot area the parking area at the neighbor at 6 Hancock Street's request. Another neighbor is concerned that parking will be rented; they are willing to have a restriction in the deed to prevent this. They are okay with making these requests from the neighbors conditions of approval.

Chairman Ramsdell opened the hearing to public comment.

In favor:

Douglas Muir, 10 Hancock Street, Newburyport, MA Mr. Muir is in favor provided the home will move. This will be an improvement to the neighborhood. He asked Chairman Ramsdell if the Special Permit could be approved and conditional on changing the location. Chair Ramsdell responded that it could be.

Neighbor, 6 Hancock Street, Newburyport, MA Approves revised plan.

Neighbor, 1 Hancock Street, Newburyport, MA This neighbor is across the street and agrees with plan.

Jill Gourley, 17 Chestnut Street, Newburyport, MA Ms. Gourley indicated that this is a great improvement to the neighborhood.

In Opposition:

None

Questions from the Board regarding Public Hearing #4 & #5:

Mr. LaBay asked about parking at 57 Bromfield - is it tandem? The applicant indicated that it is. Mr. Ciampitti had a question about materials. The applicant said the windows are aluminum-clad and hardy siding with a 4 inch reveal.

Mr. LaBay asked about the rationale for moving the building. – was the intent to move it further from #6 Hancock? The applicant said that yes, that is correct.

Mr. Snyder asked about the lot coverage calculations.

Chair Ramsdell asked about the area where they were putting a deed restriction – what do they assume will be there? Everett Chandler, Land Surveyor Design Consultants, Inc, 68 Pleasant St., Newburyport, MA indicated there is a curb that will be maintained. This is the side yard for the property. Attorney Griffin said that the condition that the special permit be conditioned that no vehicle parking take place on that part of the lot.

Deliberations:

Mr. Eigerman didn't participate in the previous approval. He said that all the necessary conditions to approve are here; the design is fine. One concern he has is Urban Design – the problem on Bromfield is that this will be the only gap in the street wall and it is on a corner – is this substantially more detrimental. This is his only concern.

Mr. Snyder agreed with Mr. Eigerman. It seems odd from a bird's eye view. He tried picturing the houses closer to the corner, but it wasn't going to work.

Mr. Pennington said that, as an architect, he thought a little unusual, but it makes it eclectic. It adds interest to the area, not a traditional pattern. He can appreciate that it is different, but is okay with that.

Mr. Ciampitti agrees with Mr. Pennington. With a fence and yard that are pertinent to the structure, it will be a refreshing change in the south end to see a corner lot with some space. He feels it is nice, eclectic and an improvement to the neighborhood.

Mr. LaBay has no issue with the open corner. He agrees with Ciampitti that a fence or visual barrier would be good. He feels the applications represent a reasonable use of the properties. He has a question about telling the owners what they can and cannot do with their property – he doesn't think that is the business the ZBA should be in.

Chair Ramsdell said he probably would have been happier with a deeded half-house on the properties. He is not sure the current proposals blend with the neighborhood. He disagrees with Mr. LaBay that it is not the purview of the board to make conditions on the use of the property.

Mr. Pennington said that similar to Mr. LaBay he was reluctant as well to put conditions like those proposed, but if the applicant is comfortable and it pleases the neighbors, it is okay.

Mr. Ciampitti said the rendering is not at an angle that people would see. There are no trees, no cars – no one would see something exactly like the rendering.

Mr. Eigerman said that it is not an overreach to put in a restriction. You can't park in open space. Mr. Pennington said that the open area will be noticeable in a way that will be intentionally interesting.

Chair Ramsdell said the question is not if it is noticeable, but is it detrimental?

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| Address: 55.5 Bromfield Street Special Permit for Non-Conformities |
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Motion to approve the Special Permit for non-conformities with the condition that the applicants agree to shift 55.5 Bromfield 10 feet to the west and create a side yard setback of 20 feet and upon agreement of the applicant to prohibit parking in the sideyard between the structure and Bromfield Street, made by Mr. Pennington, seconded by Mr. Snyder.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Duncan LaBay – no

Jamie Pennington – approve

Howard Snyder – approve

Richard Goulet – approve

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| Address: 57 Bromfield Street |
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| Special Permit for Non-Conformities |
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Motion to approve the Special Permit for non-conformities made by Mr. Snyder, seconded by Mr. LaBay.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder – approve

Richard Goulet –approve

Adjournment

Motion to adjourn made at 9:10 p.m. by Mr. Snyder seconded by Mr. Goulet.

The motion passed unanimously.

Ed Ramsdell – approve

Duncan LaBay – approve

Jamie Pennington – approve

Howard Snyder – approve

Richard Goulet –approve

Jared Eigerman - approve

Respectfully submitted, Jennifer Lamarre - Note Taker